TONG CHAI YON

v.

ONG SENG TIO

HIGH COURT MALAYA, MELAKA
AUGUSTINE PAUL JC
[ORIGINATING SUMMONS NO: 24-400-1997]
20 DECEMBER 1997

CIVIL PROCEDURE: *Trial - Certificate of urgency - Application to extend caveat - Registrar's notice to remove caveat about to expire - Whether caveator ought to have applied to extend caveat when notice given - Whether certificate of urgency misused - Whether issuance of certificate of urgency automatically results in accelerated hearing - Principles applicable to issuing a certificate of urgency - Practice Note No. 3 of 1985*

A certificate of urgency was issued to hasten the hearing of the plaintiff's originating summons. The summons was filed on 18 December 1997 and it sought to extend a caveat. The reason for this application for early hearing, as stated in the certificate of urgency, was that the Registrar of Land Titles had given notice to remove the caveat on 28 December 1997 unless it was extended by the court. This notice was dated 29 October 1997.

Held:

[1] Practice Note No. 3 of 1985 expressly stipulates that solicitors are not to issue certificates of urgency unless they are satisfied that the application has to be heard urgently. The requirement for the certificate to be signed personally by an advocate and solicitor signifies the importance attached to and the care that must be exercised in its issue. Applications which require service must contain a statement on the possibilities of immediate service to enable the court to determine the hearing date. The discretion to fix an early date for the hearing of the application will be based mainly on the grounds stated in the certificate or affidavit. Therefore, the issue of a certificate of urgency is not an automatic passport for an accelerated hearing date. It will not be entertained by the court if the grounds stated do not have any merits.

[2] The issue of the certificate of urgency in this case is a misuse of the purpose for which it was intended. Instead of taking steps to have the caveat extended when he received the registrar's notice, the plaintiff slept on his rights. The plaintiff has only himself to blame for the delay in applying for an extension. If he was prevented from making the application

earlier for some valid reasons, the position may be different. No such reasons are specified in the certificate of urgency. Therefore, this is not an urgent application within the meaning of Practice Note No. 3 of 1985.

[Application dismissed.]

Legislation referred to:
National Land Code 1965, s. 326(2), Form 19C
Rules of the High Court 1980, O. 32 r. 3

For the plaintiff - Chuah Bee Ang; M/s Moi, NK Koh & Chee

Reported by S Dharmendran

JUDGMENT

Augustine Paul JC:

Practice Note No 3 of 1985 was issued by the Rt Honourable Chief Justice to standardise the practice regarding certificates of urgency. It reads as follows:

Nota Amalan No 3 tahun 1985

Perakuan Segera

Bagi menyeragamkan suatu amalan berkenaan perakuan segera, Yang Amat Arif Hakim Besar mengarahkan bahawa di mana sesuatu permohonan yang dikehendaki untuk dibicarakan dengan segera atau dengan serta-merta, sama ada semasa mahkamah bercuti atau sebaliknya, suatu perakuan segera dalam contoh yang dinyatakan dibawah ini, yang ditandatangani oleh seorang peguambela dan peguamcara (dan bukannya oleh sebuah firma peguambela dan peguamcara) hendaklah difailkan. Perakuan tersebut hendaklah menyatakan dengan ringkas alasan-alasan yang disandarkan bagi memperakui bahawa perkara tersebut perlu disegerakan. Peguamcara-peguamcara dilarang mengeluarkan perakuan sedemikian melainkan mereka berpuashati bahawa perkara berkenaan perlu disegerakan perbicaraanya.

Jika pihak yang memohon perbicaraan segera atau serta merta itu tidak diwakili oleh seorang peguambela, suatu affidavit yang mengesahkan alasan-alasan yang disandarkan hendaklah difailkan.

Dalam menjalankan budibicara untuk menetapkan suatu tarikh awal bagi perbicaraan permohonan berkenaan, sebahagian besar dari budibicara itu hendaklah bergantung kepada alasan-alasan yang dinyatakan dalam mana-mana perakuan atau afidavit berkenaan.

The specimen Certificate of Urgency is in the following terms:

BORANG

(Tajuk seperti dalam guaman)

PERAKUAN SEGERA

Saya (nama penuh peguambela dan peguamcara) dengan ini memperakui bahawa saman/usul/petisyen sebagaimana dalam lampiran bernombor ... adalah perlu disegerakan perbicaraannya berdasarkan atas alasan-alasan berikut:

(Di sini nyatakan alasan-alasan dalam perenggan-perenggan bernombor)

Bertarikh pada ... haribulan ... 1985.

...

(Peguamcara dan Peguambela)

Perakuan Segera ini difailkan oleh Tetuan ... Peguambela dan Peguamcara bagi pihak ... yang tersebut di atas yang alamat penyerahannya ialah di ...

In order to receive urgent attention by the court a certificate of urgency must

(a) be signed by an advocate and solicitor and not by a firm of advocates and solicitors and

(b) state briefly the grounds on which the application requires to be heard urgently or

(c) where the party applying for urgent or immediate hearing is not represented by a solicitor, an affidavit affirming the grounds shall be filed.

Thus the object of a certificate of urgency is clear. It is to be issued where a matter requires urgent and immediate attention by the court. It is a potent weapon in the armoury of the rules of civil procedure as it ensures that an application is heard urgently or immediately, whether during court vacation or otherwise. It avoids the normal route that a matter filed in court takes for the fixing of a matter for hearing in accordance with the requirements of the Rules of the High Court 1980. *Ex-parte* applictions may be heard immediately. *Inter-partes* applications which normally require service of the summons on every other party not less than two clear days before the hearing date fixed may be directed to be heard earlier as authorised by O. 32 r. 3 of the Rules of the High Court 1980 which reads as follows:

A summons asking only for the extension or abridgment of any period of time may be served on the day before the day specified in the summons for the hearing thereof but, except as aforesaid and unless the Court otherwise provides, a summons must be served on every other party not less than 2 clear days before the day so specified.

If the need arises another matter which has already been fixed for hearing may have to be vacated in order to accommodate the urgent application. The court may even sit beyond its normal working hours to attend to the matter. This will ensure that the doors of justice are always open to those who need its assistance urgently. The need for immediate injunctive relief, for example, may require the activation of the court process through a certificate of urgency. The practice note expressly stipulates that solicitors are not to issue such certificates unless they are satisfied that the application has to be heard urgently. The requirement for the certificate to be signed by an advocate and solicitor personally signifies the importance attached to and the care that must be exercised in its issue. In my opinion applications which require service must contain a statement on the possibilites of immediate service to enable the court to determine the hearing date. The discretion to fix an early date for the hearing of the application will be based mainly on the grounds stated in the certificate or affidavit. It is therefore clear that the issue of a certificate of urgency is not an automatic passport for an accelerated hearing date. It will not be entertained by the court if the grounds stated in the certificate or affidavit do not have any merits.

In this case the plaintiff filed an originating summons on 18 December 1997 to, *inter alia,* extend a caveat which he had entered on 23 May 1997 in respect of lands known as geran no pendaftaran 22774 Lot No 7637 Mukim Tangkak, Daerah Muar, Negeri Johor. The summons was supported by an affidavit affirmed by the plaintiff setting out the merits of his case. He was compelled to make this application as the registrar of land titles had served on him a notice dated 29 October 1997 in borang 19C pursuant to s. 326 of the National Land Code to remove the caveat in two months unless the period is extended by the court. The two-month period would expire on 28 December 1997. Thus in order to have the summons heard immediately the plaintiff's solicitor issued a certificate of urgency, the material parts of which read as follows:

PERAKUAN SEGERA

Saya, Chuah Bee Ang, seorang Peguambela dan Peguamcara di Mahkamah Tinggi Malaya di Melaka dengan ini memohon supaya pendengaran Saman Pemula Pemohon disegerakan atas alasan-alasan berikut:-

(1) Satu perintah Mahkamah yang dimeteraikan melanjutkan tempoh masa yang dicatatkan dalam Notis Berkenaan Dengan Cadangan Hendak Memotong Kaveat (Borang 19C) bertarikh 29.10.1997 perlu disampaikan Pendaftar Hakmilik Tanah Negeri Johor pada atau sebelum 28.12.1997.

Bertarikh pada 18 haribulan Disember 1997.

To my mind the issue of the certificate of urgency in this case is a misuse of the purpose for which it was intended. It is true that the plaintiff must have the caveat entered by him extended by 28 December 1997. To that extent the application is urgent to him as far as he is concerned. But the need to have the caveat extended did not arise suddenly. The plaintiff was informed by notice dated 29 October 1997 of the intended removal of the caveat in two-months time unless extended by order of court. Instead of having taken steps to have the caveat extended when he received the notice the plaintiff slept on his rights. He is now making the application when the two-months' period specified in the notice is about to expire. He has only himself to blame for the delay in making the application. Of course the position may be different if he had been prevented from making the application early for some valid reasons. No such reasons are specified in the certificate of urgency. In my opinion, therefore, this is not an urgent application within the meaning of Practice Note No 3 of 1985. Solicitors ought to be more prudent in resorting to this speedy form of justice. Its purpose and importance must not be undermined. Every effort must be made to restrict its use to the object with which it was introduced. However, the court as the final bastion of justice and in line with its policy of giving early hearing dates, fixed the application for hearing on 20 December 1997 in accordance with O. 32 r. 3 of the Rules of the High Court 1980 which stipulates that a summons asking only for the extension or abridgment of any period of time, as in this case, may be served on the day before the day specified in the summons for the hearing thereof. But that does not deflect from the gravity of what I have said on the object and purpose of a certificate of urgency.

When the case was called up for hearing on 20 December 1997 learned counsel requested for an adjournment as she was not able to serve the application on the defendant. Needless to say the plaintiff would not have been placed in this predicament if he had acted with due diligence. As there was a possibility that the application would not be served by the time the caveat lapses learned counsel applied for an *ex parte* order for the extension of the two-months period pursuant to s. 326(2) of the National Land Code. No circumstances as required by the section were advanced to me. Be that as it may, as the plaintiff's affidavit disclosed *prima facie* merits I extended the caveat till 5 January 1998 with an undertaking in damages given by the plaintiff should he fail to have the two-months period extended at the hearing date.